

debtor as to him against whose estate the claim is made, is insolvent; or, according to the rule of this court, the claim will be excluded from any participation in the distribution of the estate upon which it is made. (*n*)

The auditor says, that the original acceptances ought to be produced. By this I understand it to be objected, that the original bills of exchange themselves have not been produced. In an action at law upon a bill of exchange, on the general issue being pleaded, it is necessary to produce the original bill itself, or to prove that it has been lost, before any evidence can be offered of its contents. (*o*) And even if, in such action, there is a judgment by default; although it is not necessary, on executing the writ of inquiry, to prove the contract; yet the original bill itself must be produced. (*p*) But, in the distribution of the real assets, this court is governed by the rules prescribed for the authentication of claims in the analogous distribution of the personal assets. As to which it is declared, by the act in relation to the administration of the personal estates of deceased persons, that in case of a specialty, bond, note, or protested bill of exchange, the voucher shall be the instrument of writing itself, or a proved copy, in case it be lost, with a certificate of the oath, &c. (*q*)

These directions apply to claims No. 67, 108, 109, 110, 111, 112 and 113, which must be allowed, because the acceptors are shewn to be insolvent; to claims No. 69 and 70, which must be rejected, because the original bills have not been produced or shewn to be lost; and to claim No. 91, which must be rejected, because it is made by an acceptor who has not shewn that he had in his hands at the time no effects of the drawer.

According to the rule of this court, where the deceased, with others, appears to have been jointly bound for the payment of the claim, the creditor must explain the apparent ambiguity, or he will be altogether excluded. He must shew that the deceased was the principal debtor, in which case he will be permitted to come in for the whole amount; or that the deceased was a co-obligor, in which case the creditor will be allowed to claim no more than half; unless he also shews that the other obligor is insolvent; or if the deceased was only a surety, then the creditor must shew that the principal is insolvent. (*r*)

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(*n*) *Watkins v. Worthington*, 2 Bland, 509.—(*o*) *Selwyn N. P.* 408.—(*p*) *Tidd's Prac.* 528.—(*q*) 1798, ch. 101, sub ch. 9, s. 4.—(*r*) *Watkins v. Worthington*, 2 Bland, 509.